

107
TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 177.

HOSMER B. PARSONS, PLAINTIFF IN ERROR,

vs.

THE DISTRICT OF COLUMBIA AND JOHN W. ROSS,
CHARLES F. POWELL, AND GEORGE TRUESDELL,
COMMISSIONERS OF THE DISTRICT OF COLUMBIA.

IN ERROR TO THE COURT OF APPEALS OF THE DISTRICT OF
COLUMBIA.

FILED MAY 14, 1898.

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In the Court of Appeals of the District of Columbia

HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS *et al.*,
Commissioners, &c. } No. 539.

a Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents. } At Law. No. 38751.
In Certiorari.

UNITED STATES OF AMERICA, } ss:
District of Columbia,

Be it remembered that in the supreme court of the District of Columbia, at the city of Washington, in said District, at the times hereinafter mentioned the following papers were filed and proceedings had in the above-entitled cause, to wit:

1 *Petition in Certiorari.*

Filed October 5, 1895.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents. } At Law. No. 38751.
In Certiorari.

To the justice of said court, holding a special term at law:

1. The petition of Hosmer B. Parsons respectfully shows that he is the owner of a freehold estate in the following parcel of land, situated near the city of Washington and in the District of Columbia and described as follows:

A part of the three tracts of land known as Girl's Portion, Clonin Course, and Second Addition to Hargard, contained within the following metes and bounds:

Beginning at station No. 11 of a survey made by Charles J. Uhlman June 12, A. D. 1863, said station being on the east side of Rock creek, and running thence south $80\frac{1}{4}^{\circ}$ east 42 chains 55 links, thence north $57\frac{3}{4}^{\circ}$ east 18 chains 92 links to the Seventh-street turnpike road; thence south $2\frac{1}{2}^{\circ}$ west 44 links; thence south $57\frac{3}{4}^{\circ}$ west 38 chains 14 links; thence south 75° west 28 chains 24 links to Rock creek; thence with the several windings of said creek the following courses and distances: North $49\frac{3}{4}^{\circ}$ west 7 chains 45 links; north $51\frac{1}{2}^{\circ}$ west 1 chain 42 links; north 57° west 4 chains 17 links; north $57\frac{1}{2}^{\circ}$ west 6 chains; north $8\frac{3}{4}^{\circ}$ east 2 chains 24 links; 2 north $15\frac{1}{2}^{\circ}$ west 3 chains 74 links; north 38° west 2 chains 70 links; north 45° east 3 chains 50 links; south 84° east 4 chains; south $51\frac{1}{2}^{\circ}$ east 3 chains 64 links; north $76\frac{1}{2}^{\circ}$ east 2 chains 34 links; north 49° east 4 chains 19 links; north $61\frac{1}{2}^{\circ}$ east 1 chain 54 links; north 50° east 54 links; north $56\frac{1}{2}^{\circ}$ east 1 chain 49 links; north 45° east 1 chain 65 links to the point of beginning, containing in all 87 acres and $\frac{3}{10}$ of an acre, more or less.

2. Against said parcel of land, unsufficiently described, there is borne upon the tax records in custody of the respondent-a certain illegal charge, viz., the sum of \$872.50, besides interest.

3. Said charge against said parcel of land is in the name of Hosmer B. Parsons; said charge purports to be a special assessment made by the Commissioners of the District of Columbia as a water-main tax or assessment for laying water main in the road or street on which the said parcel of land abuts, in accordance with the act of the Legislative Assembly of the District of Columbia approved June 23, 1873, and the acts of Congress approved respectively June 10, 1879, and June 17, 1890, and August 11, 1894.

Petitioner is uninformed and ignorant as to how much of said alleged work was done or what part of said assessment was made under each of said acts.

4. Your petitioner avers on information and belief that the record in the custody of the respondents shows the following defects and irregularities which invalidate said assessment:

1. That petitioner was not one of the property-owners who requested that the work and improvements for which said parcel of land is assessed be done and made, and that said charge was 3 made against property whose owner had not requested the doing of said work or the making of said improvements.

2. That the owner of the said parcel of land, meaning your petitioner, did not request the doing of the work or making of the improvements charged for, was not consulted as to their advisability, had and was given no opportunity to be heard upon the questions of cost or utility or benefit of the work or of the apportionment of the tax, and was not notified of the amount charged until after the work was concluded and after the said assessment had been made and had gone into effect as a lien upon said land, which was not a reasonable time.

3. Said assessment was not made and was not authenticated by any officer or person authorized to make or authenticate the same.

4. The assessment was made without any estimate of the cost of

the work to be done and without regard to the cost of the work or the value of the improvement, and not upon the basis of benefits to the property assessed, and said assessment is in excess of the cost of said work.

5. The assessment was made without authority of law, and the respondents had no jurisdiction or right to make the same.

6. The description of the parcel of land assessed is insufficient.

7. The said tax was not assessed within thirty days after the said water main had been laid and erected.

8. All of the said land assessed does not abut upon the street in which said water main was laid.

4 5. Said charge is unpaid, and respondents, the Commissioners of the District of Columbia, now threaten to sell and convey the said land of your petitioner in order to satisfy and pay said illegal charge, whereby the title to petitioner's land is clouded, he is injured, and has no appeal.

Wherefore petitioner prays that the United States writ of certiorari may issue, directed to each, the District of Columbia and to John W. Ross, Charles F. Powell, and George T. Truesdell, Commissioners of the District of Columbia, commanding them to certify immediately to this court a copy of each and every record and part of record in their custody relating in any manner to charges for water-main tax or for laying water main on Brightwood avenue, made in the name of Hosmer B. Parsons against the parcel of land particularly described on the first page of this petition and known on the water-tax records of the District of Columbia as "part plat 12, measuring on Brightwood avenue six hundred and ninety-eight front feet," said charge having been made by the Commissioners of the District of Columbia by virtue of supposed powers given to said Commissioners by the acts of Congress approved respectively June 10th, 1879, June 17th, 1890, and August 11, 1894, and by the act of the Legislative Assembly of the District of Columbia approved June 23, 1873, or by one or more of said acts, including all statements of costs, measurements, notice to proprietor or proprietors of land, and proof of manner of service of such notice.

And that upon the coming in of such return of the respondents the said charge herein complained of may be quashed and annulled by this court and the respondents ordered to cancel it on the records in their custody.

H. B. PARSONS.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

5 DISTRICT OF COLUMBIA :

I, Hosmer B. Parsons, on oath say that I am the petitioner in the foregoing complaint signed by me; that I know the contents of said petition; that the statements therein made of my own knowledge are true, and those made on information and belief I believe to be true.

H. B. PARSONS.

Subscribed and sworn to before me this 3rd day of October, 1895.

[SEAL.]

A. W. ZIMMERMANN,
Notary Public for Kings County.

Certificate filed in N. Y. county.

OCTOBER 5TH, 1895.

Let the writs issue as prayed.

A. C. BRADLEY, *Justice.*

Records returned by respondents in response to writ of certiorari, as per stipulation of counsel hereto annexed.

FEB'Y 8, 1894.

Respectfully referred to the chief of the fire department, with request that he will kindly state whether in his opinion this main is necessary for the public safety.

GEO. McC. DERBY,
Capt. of Engr.

FIRE DEPARTMENT, *February 9, 1894.*

Respectfully returned to the Hon. Commissioners, with the recommendation that the within-described water main be laid, as I consider it necessary for the public safety.

JOSEPH PARRIS,
Chief Engineer.

6 (Engineer department, vol. —), 189—.

FEBRUARY 12, 1894.

Respectfully forwarded to the Engineer Commissioner D. C., with recommendation that a water main be laid on 7th St. from Military road to the Piney Branch road, thence on Piney Branch road to Vermillion street, Takoma Park, and thence on Vermillion street to Carroll street; estimated cost, \$9,547.50.

G. McC. DERBY,
Capt. of Engineers, U. S. A.

FEBRUARY 13, 1894.

Approved; the main to be located in present roads and streets so that it will lie in the proper position, just as near as practicable, when the roads & streets are changed to conform to the present highway-extension plans, to aid in which a copy of the maps of such plans, covering doubtful locations, should be obtained before opening trench for the main.

CHAS. F. POWELL.

Ordered by Board Commissioners D. C. Feb'y 14, 1894.

JOHN WALKER,
Chief Clerk

E. D.

MARCH 9, 1894.

7 Respectfully forwarded to the Engineer Commissioner D. C., with the recommendation that the 12th supply main for Takoma be laid on Brightwood avenue, from the Piney Branch road to Aspen street, instead of on the Piney Branch road from Brightwood avenue to Vermillion street, as heretofore ordered est. cost, \$8,648.00.

G. McC. DERBY,
Capt. of Engineers, U. S. A.

Approved March 10, 1894.

CHAS. F. POWELL,
Corps of Engineers, U. S. A., Commissioners D. C.

Ordered by Board of Commissioners D. C.
March 10th, 1894.

JOHN WALKER,
Chief Clerk.
E. D.

Recommendation.

No. 10082, W. D., 189-.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells. Capt. Edward Burr, assistant to Engineer Commissioner.

WASHINGTON, March 17, 1895.

Captain G. McC. Derby, U. S. Army, Ass't to Engineer Comm'r D. C.

8 CAPTAIN: In reference to communication 10082 W. D., 1894, I have the honor to recommend the laying of a 12" water main on the east side of Brightwood avenue south from Shepherd road to Flint street, in Brightwood Park; this will be a continuation of the 12" main already ordered for Brightwood Ave. as far south as Shepherd's road; also a six (6) inch main in center of Flint St. east from Brightwood avenue to 9th St. and a six inch (6) main in center of 9th south to Des Moines St.; total cost of 12" main, 1,260' @ 1.50, \$1,890.00, and 1,380' of 6" @ 90 cts., \$1,242.00; total cost of mains, \$3,132.00.

Four (4) fire hydrants, @ \$85.00, \$340.00; total cost, \$3,472.00. Assessment will cover cost of laying main.

Respectfully,

J. S. GARLAND.

Approved.

H. F. HAYDEN, *Sup't.*

Report of H. F. Hayden.

No. —, W. D., 189—.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells. Capt. Edward Burr, assistant to Engineer Commissioner.

WASHINGTON, July 25th, 1895.

Mr. Jno. J. Beall, water registrar, D. C.

SIR: You are respectfully notified that the following water mains have been laid, viz:

9 1,448½ feet 12" on the east side of Brightwood avenue from Military road to Flint Sts., Brightwood, D. C.

5,699 ft. 12" on Brightwood avenue from Military road to Aspen street, Brightwood.

Fire hydrants erected, completed July 20, '95.

1,435½ feet 6" on Flint street from Brightwood avenue to 9th street, and on 9th St. from Flint to Desmoines, Brightwood Park.

1,517½ ft. 6" on Desmoines St. from 9th to end of property line east, Brightwood Park.

Fire hydrants erected, completed July 20, '95.

Files 9957, W. O., 10183, 10082, & 10062, and all papers pertaining thereto, are herewith transmitted.

Very respectfully,

H. F. HAYDEN,
Sup't Water Dep't.

Endorsement: July 26, 1895. Referred to Mr. Cross for assessment. Jno. J. Beall, W. R.

10

Water-main Assessment.

Ave.

List of property fronting on Brightwood street between Military road and Aspen streets. File No. 9957.

Square.	Lot.	Front ft.	Owners.	Amount represented in petition.	Am't not represented in petition.	Amount previously assessed.	Remarks.
	Part.	698	Hosmer B. Parsons.	872 50	17-468

Endorsement.

Mr. Cross:

An assessment on the within-described property for a water main

is levied to take effect August 10, 1895. Please make notices in accordance with that date.

JNO. J. BEALL,
Water Registrar.

August 7, 1895.

11

The Assessment by John J. Beall, 2c.

No. —, W. D., 189—.

District of Columbia, office of the Engineer Commissioner, water department.

Water rates, water distribution, pumps, and wells.

WASHINGTON, August 10th, 1895.

Captain Edward Burr, assistant to Engineer Commissioner :

An assessment of one dollar and twenty-five cents (1.25) per linear foot is levied this day on the following property : For water mains laid on Brightwood avenue bet. Military road and Aspen street, Flint street between Brightwood avenue and 9 street, 9th street between Desmoines and Flint streets, Brightwood avenue between Military road and Flint street, Desmoines street between 9th street and end of property line east.

JNO. J. BEALL,
Water Registrar.

Water-main Assessment.

Brightwood avenue bet. Military road and Aspen street.

Square.	Lot.	Names.	Amount.
	Part.....	Hosmer B. Parsons.....	\$872 50

12

Notice of Assessment.

Form No. 1.

Return this notice to water department and get tax bill to be paid to the collector of taxes of the District of Columbia.

Engineer department, water office, District of Columbia.

No. —.

WASHINGTON, August 10th, 1895.

Mr. Hosmer B. Parsons :

You are hereby notified that in accordance with the acts approved June 23, 1873, June 10, 1879, June 17, 1890, and August 11, 1894,

a water main was laid on Brightwood avenue *street* between Military road and Aspen street on July 20th, 1895, and that water-main tax has been assessed upon the following property, being part —, for description see attached sheets, square plat 12, measuring on Brightwood Ave. six hundred and ninety-eight (698) front feet, at one dollar and twenty-five cents per linear foot.

Payment of this tax can be made in four equal annual instalments, the first of which is payable on or before the 10th day of Sept., 1895, without interest, and the remaining instalments on the 10th day of Aug. in each succeeding year, with interest at ten per cent. per annum from August 10th, 1895.

If the first instalment of the above be not paid within the time specified the property will be advertised and sold by the collector of taxes at the succeeding tax sale.

The whole amount of said tax may be paid in full on or before the 10th day of September, 1895, in which case an abatement of six per cent. will be made.

Total tax.....	\$872 50
Discount.....	52 35

Amount required....	\$820 15
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JNO. J. BEALL,
Water Registrar.

Recorded in Ledger, vol. 17, folio —.
Delivered by mail August 24th, 1895.

By J. B. FITZHUGH, *Inspector.*

Envelope.

OFFICE OF THE
ENGINEER COMMISSIONER,
WASHINGTON, D. C.

WATER DEPARTMENT.

Commissioners of the District of
Columbia.

OFFICIAL BUSINESS.

Any person using this envelope to
avoid the payment of postage on
private matter of any kind will
be subject to a fine of \$300.

A. M. BLISS, Esq.,
Overlook Inn, D. C.

* * * * *

14

Return of Service of Notice.

Office of the Commissioners District of Columbia, water department.

Return of Service of Notice.

I hereby certify that the annexed notice is a copy of the original notice of assessment against part —, assessed in the name of Hosmer B. Parsons, for laying water main on Brightwood avenue between Military road and Aspen streets, plat 12, for description see at-

tached sheet, and that said original notice was served by me on the day of 24th August, 1895, in the following manner, by mail, addressed to A. M. Bliss, Esq., Overlook inn, D. C., ag't for Hosmer B. Parsons, by placing notice in a penalty envelope securely sealed and addressed as above, a copy of which envelope is attached hereto.

J. B. FITZHUGH, *Inspector.*

Sworn to and subscribed before me this 12th day of September, 1895.

GORDON W. GROW,
Notary Public. [SEAL.]

15

Affidavit of John B. Fitzhugh.

Filed January 4, 1896.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS	} At Law. No. 38751.
<i>vs.</i>	
THE DISTRICT OF COLUMBIA.	

DISTRICT OF COLUMBIA, *To wit:*

Before me personally appeared John B. Fitzhugh, who, being by me first duly sworn according to law, deposed and said that affiant is informed and believes that the A. M. Bliss to whom the original notice of assessment was sent, as set forth in the affidavit of your affiant of the 12th Sept., 1895, and filed in this cause, with the return of the respondent, was at the time of the mailing and service as therein stated of said notice the agent of the property described in said notice; chargeable with the water-main assessment sought by petition in his writ filed in this cause to be quashed.

JOHN B. FITZHUGH.

Subscribed and sworn to before me this 3rd day of January, A. D. 1896.

MASON N. RICHARDSON,
Notary Public. [SEAL.]

16

Motion for Judgment.

Filed November 25, 1895.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS, Petitioner,	} Law. No. 38751.
<i>vs.</i>	
THE DISTRICT OF COLUMBIA <i>et al.</i>	

Now comes the petitioner and moves the court for judgment upon the return of the respondents.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

Mr. S. T. Thomas and Mr. A. B. Duvall, attorneys for respondents :

Take notice that we have filed in the above named and numbered case a motion, of which the foregoing is a copy, and that on Saturday, November 30th, 1895, at ten o'clock a. m., or as soon thereafter as counsel can be heard, we will call the same to the attention of the court before Justice Bradley, circuit court No. 1.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

Due and legal service of the foregoing motion and notice is hereby acknowledged and copy received.

S. T. THOMAS,
Attorneys for Respondents.

17

MONDAY, January 6th, 1896.

Session resumed pursuant to adjournment, Mr. Justice Bradley presiding.

* * * * *

HOSMER B. PARSONS, Petitioner,

v.

THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Respondents.	}	At Law. No. 38751. In Certiorari.
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This case coming on to be heard upon the petitioner's motion for judgment upon the return of respondents to the writ of certiorari issued in this case, and the same being heard, it is considered that said motion be, and it is hereby, overruled, and the petition herein be, and it is hereby, dismissed at petitioner's costs.

Order for Appeal.

Filed January 6, 1896.

In the Supreme Court of the District of Columbia, the 6th Day of January, 1896.

HOSMER B. PARSONS

vs.

THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia.	}	Certiorari. At Law. No. 38751.
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The clerk of said court will please enter an appeal to the Court of Appeals from the judgment in this case and issue citation.

A. A. & T. W. BIRNEY,
Attorneys for Parsons, Petitioner.

18 In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS

vs.

THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia. } At Law. No. 38751.

The President of the United States to The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Court of Appeals of the District of Columbia, upon the docketing the cause therein under and as directed by the rules of said court, pursuant to an appeal filed in the supreme court of the District of Columbia on the 6th day of January, 1896, wherein Hosmer B. Parsons is appellant and you are appellees, to show cause, if any there be, why the judgment—decree—rendered against the said appellant should not be corrected and why speedy justice should not be done to the parties in that behalf.

Seal Supreme Court of the District of Columbia. Witness the Honorable Edward F. Bingham, chief justice of the supreme court of the District of Columbia, this 6th day of January, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN R. YOUNG, *Clerk*.

Service of the above citation accepted this 20 day of January, 1896.

S. T. THOMAS,
Attorney for Appellees.

19

Memorandum.

1896, Jan. 11.—Bond for appeal filed.

Stipulation.

Filed January 23, 1896.

In the Supreme Court of the District of Columbia.

HOSMER B. PARSONS

vs.

THE DISTRICT OF COLUMBIA *et al.* } Law. No. 38751.

It is stipulated and agreed between counsel in this case that the following parts of the record shall constitute the transcript of record on appeal:

1. The petition in full.

The following parts of those records of the District of Columbia returned by the respondents in response to the writ of certiorari, viz:

2. The recommendation of G. McC. Derby, of date February 12, 1894, with the entries following said recommendation.

3. The recommendation, with heading, — J. S. Garland, of date March 17, 1895, but omitting the tracing accompanying same.

4. The report of H. F. Hayden, sup't of water department, of date July 25, 1895, with heading thereto.

5. The heading and all entries on the sheet headed "Water-main assessment," in their order.

6. The assessment by John J. Beall, water registrar, of date August 10, 1895, with its heading, and also the entry on attached sheet.

20 7. The notice of assessment, dated August 10, 1895, addressed to Hosmer B. Parsons, with the affidavit and copy of envelope attached thereto, and omitting the attached description of land, which description is hereby admitted to be in the same terms as that contained in the petition in certiorari.

8. The affidavit of John B. Fitzhugh, filed as an amendment to the return of the respondents.

9. The motion for judgment.

10. The judgment of the court.

11. The entries showing appeal from judgment, approval of appeal bond, citation to Court of Appeals, and acknowledgement of service.

A. A. & T. W. BIRNEY,
Attorneys for Petitioner.

S. T. THOMAS,
Attorney for Respondent.

January 22nd, 1896.

21 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA, }
District of Columbia, } ss :

I, John R. Young, clerk of the supreme court of the District of Columbia, do hereby certify the foregoing pages, numbered from 1 to 20, inclusive, to be true copies of originals in cause No. 38751, at law, wherein Hosmer B. Parsons is plaintiff and The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, are defendants, as the same remain upon the files and records of said court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Seal Supreme Court of the District of Columbia, at the city of Washington, in said District, this 5th day of February, A. D. 1896.

JOHN R. YOUNG, *Clerk.*

Endorsed on cover : District of Columbia supreme court. No. 539. Hosmer B. Parsons, appellant, vs. The District of Columbia and John W. Ross *et al.*, Commissioners, &c. Court of Appeals, District of Columbia. Filed Feb. 10, 1896. Robert Willett, clerk.

13 In the Court of Appeals of the District of Columbia.

HOSMER B. PARSONS
vs.
DISTRICT OF COLUMBIA *et al.* } No. 539. January Term, 1896.

It is stipulated and agreed that "Shepherd's road" and "Military road," referred to in the records, are, for the purposes of this case, one and the same. This stipulation shall be filed as part of the original stipulation between counsel, and it shall be added to the transcript of record and considered and used in all respects as part of the same.

A. A. & T. W. BIRNEY,
Attorneys for Appellant.
S. T. THOMAS,
Attorney for Appellees.

[Endorsed:] No. 539. Court of Appeals, January term, 1896.
Addition to record per stipulation of counsel. Court of Appeals,
District of Columbia. Filed Feb. 21, 1896. Robert Willett, clerk.

14 THURSDAY, *April 7th*, A. D. 1896.

HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES } No. 539.
F. Powell, and George Truesdell, Commissioners of
the District of Columbia. }

The above-entitled cause was argued by Mr. T. W. Birney, attorney for the appellant, and was submitted on the record and printed briefs by Messrs. S. T. Thomas and A. B. Duvall, attorneys for the appellees.

15 HOSMER B. PARSONS, Appellant,
vs.
THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES } No. 539.
F. Powell, and George Truesdell, Commissioners of the
District of Columbia. }

Opinion.

Mr. Justice MORRIS delivered the opinion of the court:

Upon a writ of certiorari issued from the supreme court of the District of Columbia to the Commissioners of the District, in pursuance of a petition therefor filed by the appellant in that court for the purpose of having an assessment vacated that had been made against his property on account of the laying of a water main in front of said property, and upon a return made to such writ by the Commissioners, there was a judgment rendered dismissing the petition; and from that judgment the present appeal has been prosecuted.

The assignments of error raise three questions: 1st, whether the

act of the Legislative Assembly of the District of Columbia, approved June 23, 1873, in reference to the construction of water mains in the District of Columbia, and providing the mode of assessment therefor, and also the act of Congress of August 11, 1894 (28 Stat., 275), "to regulate water-main assessments in the District of Columbia," are constitutional and valid enactments; 2d, whether in the assessment there was a sufficient description of the appellant's property; 3d, whether there was sufficient notice of the assessment given to the appellant.

The second and third questions were withdrawn and abandoned at the argument by the counsel for the appellant; and the first question was fully considered and answered in the affirmative by this court in the case of *Burgdorf v. District of Columbia*, 23 Wash. Law Rep. 354, decided by us on June 4, 1895. It is true that the act of Congress of August 11, 1894, was not involved in that case; and that the legislation there considered was mainly the act referred to of the Legislative Assembly of the District of June 23, 1873, together with the acts of Congress of June 10, 1879, and June 17, 1890. But the act of August 11, 1894, so far as it is applicable here, makes no change in the pre-existing legislation further than to provide for a rate of assessment for the laying of water mains of one dollar and twenty-five cents per linear front foot against abutting land, instead of one cent and one-quarter of a cent per square foot of such abutting property, as provided in the act of the Legislative Assembly. But by this change no different question is presented from that which was considered in the case of *Burgdorf v. District*; and this is conceded by counsel for the appellant, whose sole reliance in bringing the case here apparently is the possible expectation that we might modify our opinion and determination as stated in our former decision. We see no reason to modify that decision in any respect.

It only remains, therefore, that we should affirm the judgment of the supreme court of the District of Columbia, with costs, which we accordingly do. And it is so ordered.

16

THURSDAY, April 16th, A. D. 1896.

HOSMER B. PARSONS, Appellant,	}	
vs.		
THE DISTRICT OF COLUMBIA and JOHN W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia.		No. 539. April Term, 1896.

Appeal from the supreme court of the District of Columbia.

This cause came on to be heard on the transcript of record from the supreme court of the District of Columbia and was argued by counsel. On consideration whereof it is now here ordered and adjudged by this court that the judgment of the said supreme court in this cause be, and the same is hereby, affirmed with costs.

Per MR. JUSTICE MORRIS.

April 16, 1896.

17

MONDAY, April 20th, A. D. 1896.

HOSMER B. PARSONS, Appellant,

vs.

THE DISTRICT OF COLUMBIA and JOHN W. ROSS, CHARLES F. POWELL, and GEORGE TRUESDELL, Commissioners of the District of Columbia. } No. 539.

Upon motion of Mr. A. A. Birney, attorney for the appellant in the above-entitled cause, it is ordered by the court that a writ of error to remove said cause to the Supreme Court of the United States be, and the same is hereby, allowed on giving bond in the sum of three hundred dollars.

18 Know all men by these presents that we, Hosmer B. Parsons, as principal, and Charles J. Bell and Frank L. Browne, as sureties, are held and firmly bound unto The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, in the full and just sum of three hundred dollars, to be paid to the said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, its and their certain attorney, executors, administrators, assigns, or successors; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 30th day of April, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a Court of Appeals of the District of Columbia, in a suit depending in said court between said Hosmer B. Parsons and said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, a judgment was rendered against the said Hosmer B. Parsons, and the said Hosmer B. Parsons having obtained a writ of error to the Supreme Court of the United States and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, citing and admonishing them to be and appear at a Supreme Court of the United States, to be holden at Washington, within 30 days from the date thereof:

Now the condition of the above obligation is such that if the said Hosmer B. Parsons shall prosecute his said writ of error to effect and answer all damages and costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HOSMER B. PARSONS.

[SEAL.]

CHARLES J. BELL.

[SEAL.]

F. L. BROWNE.

[SEAL.]

Sealed and delivered in the presence of—

Approved by—

R. H. ALVEY, *Chief Justice.*

[Endorsed:] No. 539. Hosmer B. Parsons, appellant, *vs.* The District of Columbia *et al.* Bond on appeal to Supreme Court U. S. Court of Appeals, District of Columbia. Filed May 5, 1896. Robert Willett, clerk.

19 UNITED STATES OF AMERICA, *ss.*:

The President of the United States to the honorable the judges of the Court of Appeals of the District of Columbia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Court of Appeals, before you or some of you, between Hosmer B. Parsons, appellant, and The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, appellees, a manifest error hath happened, to the great damage of the said appellant, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington, within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 5th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Seal Court of Appeals,
District of Columbia.

ROBERT WILLETT,

Clerk of the Court of Appeals of the District of Columbia.

20 UNITED STATES OF AMERICA, *ss.*:

To the District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the Court of Appeals of the District of Columbia, wherein Hosmer B. Parsons is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Richard H. Alvey, Chief Justice of the

Court of Appeals of the District of Columbia, this 5th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

R. H. ALVEY,
*Chief Justice of the Court of Appeals
of the District of Columbia.*

Service of above citation acknowledged this 5th day of May, 1896.

S. T. THOMAS,
Att'y for Appellees.

[Endorsed:] Court of Appeals, District of Columbia. Filed May 5, 1896. Robert Willett, clerk.

21 Court of Appeals of the District of Columbia.

I, Robert Willett, clerk of the Court of Appeals of the District of Columbia, do hereby certify that the foregoing printed and type-written pages, numbered from 1 to 20, inclusive, contain a true copy of the transcript of record and proceedings of said Court of Appeals in the case of Hosmer B. Parsons, appellant, *vs.* The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia, No. 539, April term, 1896, as the same remain upon the files and records of said Court of Appeals.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court of Appeals, at the city of Washington, this 8th day of May, A. D. 1896.

ROBERT WILLETT,
Clerk of the Court of Appeals of the District of Columbia.

Endorsed on cover: Case No. 16,299. District of Columbia Court of Appeals. Term No., 177. Hosmer B. Parsons, plaintiff in error, *vs.* The District of Columbia and John W. Ross, Charles F. Powell, and George Truesdell, Commissioners of the District of Columbia. Filed May 14, 1896.